



Rule and Interpretive/Policy Statement Review Checklist
(This form must be filled out electronically.)

This form is to be used when the current version of the rule(s) has/have not previously been reviewed. When reviewing an interpretive or policy statement, this document is to be used only if the review of the statement is not in conjunction with the review of a rule.

All responses should be **bolded**.

Document(s) Reviewed (include title): **WAC 458-20-135, Extracting natural products.**

Date last adopted/issued: **5/17/2000**

Reviewer: **Pat Moses**

Date review completed: **12/15/03**

Briefly explain the subject matter of the document(s):

- **This rule discusses the tax reporting responsibilities of persons mining, quarrying, taking, or producing natural resource products such as coal, ore, stone, mineral, or other natural products, and persons taking fish.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Need:

YES	NO	
X		Is the document necessary to comply with the statutes that authorize it? (E.g., Is it necessary to comply with or clarify the application of the statutes that are being implemented? Does it provide detailed information not found in the statutes?)
	X	Is the information provided in the document so obsolete that it is of little value, warranting the repeal or revision of the document?
X		Have the laws changed so that the document should be revised or repealed? (If the response is "yes" that the document should be repealed, explain and identify the statutes the rule implemented, and skip to Section 10.)



X	Is the document necessary to protect or safeguard the health, welfare (budget levels necessary to provide services to the citizens of the state of Washington), or safety of Washington's citizens? (If the response is "no", the recommendation must be to repeal the document.)
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Please explain.

- **Chapter 118, Laws of 2001, in part changed the definition of "extractor" to specifically recognize and exclude "farmers" as defined in RCW 82.04.213. The rule should be revised to recognize this change.**

3. Related interpretive/policy statements, court decisions, BTA decisions, and WTDs:

Complete Subsection (a) only if reviewing a rule. Subsection (b) should be completed only if the subject of the review is an interpretive or policy statement. Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.

(a)

YES	NO	
	X	Are there any interpretive or policy statements that should be incorporated into this rule? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be cancelled because the information is currently included in this or another rule, or the information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that provide information that should be incorporated into this rule?
	X	Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the rule?

(b)

YES	NO	
		Should this interpretive or policy statement be incorporated into a rule?
		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) that affect the information now provided in this document?
		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) that provide information that should be incorporated into the document?

If the answer is "yes" to any of the questions in (a) or (b) above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.



- **This rule was adopted effective 6/17/2000. Since that time there are no new or additional documents, statements, or decisions that need to be incorporated into this rule.**

4. Clarity and Effectiveness:

YES	NO	
X		Is the document written and organized in a clear and concise manner?
X		Are citations to other rules, laws, or other authority accurate? (If no, identify the incorrect citation below and provide the correct citation.)
X		Is the document providing the result(s) that it was originally designed to achieve? (E.g., does it reduce the need for taxpayers to search multiple rules or statutes to determine their tax-reporting responsibilities or help ensure that the tax law and/or exemptions are consistently applied?)
	X	Do changes in industry practices warrant repealing or revising this document?
	X	Do administrative changes within the Department warrant repealing or revising this document?

Please explain.

- **This rule is clear and concise, while addressing an extremely complex subject. There have been relatively few administrative decisions or clarifications since this rule's last adoption. This implies that the rule is well serving its purpose.**

5. Intent and Statutory Authority:

YES	NO	
X		Does the Department have sufficient authority to adopt this document? (Cite the statutory authority in the explanation below.)
X		Is the document consistent with the legislative intent of the statute(s) that authorize it? (I.e., is the information provided in the document consistent with the statute(s) that it was designed to implement ?) If "no," identify the specific statute and explain below. List all statutes being implemented in Section 9, below.)
	X	Is there a need to recommend legislative changes to the statute(s) being implemented by this document?

Please explain.

- **The department's authority to make and publish rules is contained in RCW 82.01.060(2) and RCW 82.32.300.**

6. Coordination: Agencies should consult with and coordinate with other governmental entities that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

YES	NO	
	X	Could consultation and coordination with other governmental entities and/or state agencies eliminate or reduce duplication and inconsistency?



Please explain.

- **The subject matter and taxes in Rule 135 are the specific domain of the Department of Revenue.**

7. Cost: When responding, consider only the costs imposed by the document being reviewed and not by the statute.

YES	NO	
	X	Have the qualitative and quantitative benefits of the document been considered in relation to its costs? (Answer “yes” only if a Cost Benefit Analysis was completed when the rule was last adopted or revised.)

Please explain.

- **This is an interpretive rule that imposes no new or additional administrative burdens on businesses that are not already imposed by the law.**

8. Fairness: When responding, consider only the impacts imposed by the document being reviewed and not by the statute.

YES	NO	
X		Does the document result in equitable treatment of those required to comply with it?
	X	Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community?
	X	Should the document be strengthened to provide additional protection to correct any disproportionate impact on any particular segment of the regulated community?

Please explain.

- **This rule aids taxpayers by giving specific instructions and examples. The rule also promotes consistent and fair application of the related statutes on the part of DOR staff.**

9. LISTING OF DOCUMENTS REVIEWED: Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **To the extent the following apply to persons engaging in extracting activities:**

- **RCW 82.04.040—“Sale,” “casual sale”;**
 - **RCW 82.04.050—“Sale at retail,” “retail sale”;**



- RCW 82.04.060—"Sales at wholesale," "wholesale sale";
- RCW 82.04.070—"Gross proceeds of sales";
- RCW 82.04.080—"Gross income of the business";
- RCW 82.04.100—"Extractor";
- RCW 82.04.110—"Manufacturer";
- RCW 82.04.120—"To manufacture";
- RCW 82.04.130—"Commercial or industrial use";
- RCW 82.04.190—"Consumer";
- RCW 82.04.220—Business and occupation tax imposed;
- RCW 82.04.230—Tax on extractors;
- RCW 82.04.240—Tax on manufacturers;
- RCW 82.04.250—Tax on retailers;
- RCW 82.04.270—Tax on wholesalers, distributors;
- RCW 82.04.280—Tax on . . . extracting or processing for hire;
- RCW 82.04.290—Tax on . . . other business or service activities;
- RCW 82.04.440—Persons taxable on multiple activities—Credits;
- RCW 82.08.010—Definitions;
- RCW 82.08.020—Tax imposed—Retail sales . . .;
- RCW 82.12.010—Definitions; and
- RCW 82.12.020—Use tax imposed.

Interpretive and/or Policy Statements (e.g., ETAs, PTAs, IAGs): **NONE**

Court Decisions: **NONE**

Board of Tax Appeals Decisions (BTAs): **NONE**

Appeal Division Decisions (WTDs):

- 19 WTD 515 (2000), Det 99-325 -- Defining the end of the extracting process and the beginning of the manufacturing process. Machinery and equipment used for the crushing and/or blending of rock, sand, stone gravel, or ore is machinery and equipment used in a manufacturing operation.
- 19 WTD 582 (2000), Det 99-288 -- Defining the end of the extracting process and the beginning of the manufacturing process. Moving previously quarried but unprocessed materials from stockpiles to the sorting and washing area, is not use in a manufacturing operation. Only those activities that take place after the first screen are considered part of the manufacturing operation.
- 19 WTD 804 (2000), Det 99-183 -- Defining the end of the extracting process and the beginning of the manufacturing process. Mining and transportation of gold and silver are part of the extracting process. The extracting process ends and manufacturing begins when ore is crushed and smelted.
- 21 WTD 298 (2002), Det 00-154ER -- In general, royalties received under a mineral lease are for the grant of the right to extract natural products and are not treated as the rental of real property.

Attorney General Opinions (AGOs): **NONE**



Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed): **NONE**

10. Review Recommendation:

- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation. If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- **The rule should be revised to incorporate provisions of chapter 118, Laws of 2001, which in part changes the definition of “extractor” to specifically recognize and exclude “farmers” as defined in RCW 82.04.213.**
- **When Rule 135 is amended, clarification and examples could be added. For example, it might also be modified to provide guidance as to when an extracting process ends and a manufacturing process begins for commercial fishing operations and simplify our ability to determine eligibility for the M&E exemption addressed in Rule 13601. Also, additional clarification and examples of how the multiple activities tax credit should be reported and applied would be useful.**

11. Manager action: Date: 1/14/04

AL Reviewed and accepted recommendation

Amendment priority:

- ☐ 1
☒ 2
☐ 3
☐ 4